

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Petitioner,	,	§
		§ CRIMINAL ACTION NO. H-02-36
VS.		§ CIVIL ACTION H-10-4548
		§
MANUEL LORENZO GARCIA,		§
		§
Respondent.		§

**OPINION AND ORDER**

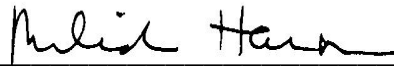
Pending before the Court in the above referenced cause is Petitioner Manuel Lorenzo Garcia's motion for certificate of appealability (459) to appeal the Court's dismissal (#458) of his earlier motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (#443).

A certificate of appealability may issue only if the petitioner has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Hodges v. Thaler*, Civ. A. No. H-11-2448, 2012 WL 2573401, \*3 (S.D. Tex. July 2, 2012), citing *United States v. Kimler*, 150 F.3d 429, 431 (5<sup>th</sup> Cir. 1998). "A petitioner 'makes a substantial showing when he demonstrates that his application involves issues that are debatable among jurists of reason, that another court could resolve the issues differently, or that the issues are suitable enough to deserve encouragement to proceed further.'" *Hodges*, 2012 WL 2573401, at \*3, citing *Hernandez v. Johnson*, 213 F.3d 243, 248 (5<sup>th</sup>

Cir.), *cert. denied*, 531 U.S. 966 (2000).

The magistrate judge found, and this Court agreed and adopted her finding, that Petitioner's petition was time-barred and that he is not entitled to equitable tolling under established Fifth Circuit precedent. Thus the Court concludes that reasonable jurists could not disagree the petition is barred by limitations. Accordingly the Court ORDERS that the motion for certificate of appealability (#459) is DENIED.

**SIGNED** at Houston, Texas, this 24<sup>th</sup> day of October, 2012.

A handwritten signature in black ink, appearing to read "Melinda Harmon", is written over a horizontal line.

MELINDA HARMON  
UNITED STATES DISTRICT JUDGE